

STATE OF MICHIGAN
COURT OF APPEALS

PETER J. RHINES, LINDA M. HATTIER and
MARY LOU RHINES,

UNPUBLISHED
October 13, 2005

Plaintiffs-Appellants,

v

ROBERT JAMES SAUNDERS and JAY
ASHLEY SAUNDERS,

No. 258020
Keweenaw Circuit Court
LC No. 03-000486-CH

Defendants-Appellees,

and

CAROL A. CARLTON, as Trustee of CAROL A.
CARLTON TRUST,

Defendant.

Before: O'Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order holding that their claims are barred by the doctrine of laches. We reverse and remand.

This is a property dispute to determine title to a family cottage located in East Harbor, Michigan. There is no dispute that the cottage originally came into the family when it was purchased in 1911 by defendants' great grandmother and plaintiffs' grandmother, Nellie Rhines. In 1953, Nellie Rhines quitclaimed the family cottage to three of her children: Ruth W. Rhines (Ruth), James E. Rhines, Sr. (Jim, Sr.), and Rudolph O. Rhines (Bud). Those three individuals held the property as joint tenants with rights of survivorship until April 1986, when Ruth quitclaimed her interest in the cottage to her brother and joint tenant, Jim, Sr. That transaction was a deed-for-deed exchange between Ruth and Jim, Sr., wherein Ruth got land from Jim, Sr., to build her house on and Jim, Sr., got Ruth's interest in the cottage.

Shortly after Ruth's quitclaim deed to him and just before he passed away, Jim, Sr., quitclaimed his interest in the cottage to plaintiffs. After Jim, Sr.'s death in 1986, Bud, believing that he was the surviving cotenant, took possession and control of the cottage until his death in 1988. The cottage was then assigned as residue of Bud's estate to defendants' mother and aunts,

who eventually quitclaimed their interest in 1995 to defendants. Ruth passed away in 2002, and plaintiffs contend that it was during the probate of Ruth's estate that they first became aware that their father quit-claimed his interest in the cottage to them in 1986.

Plaintiffs filed an action for ejectment and to quiet title to the property in 2003, approximately fourteen and one-half years after Bud's death. Eventually, the trial court held that plaintiffs' claims were barred by the doctrine of laches because of their delay in asserting them and the resulting prejudice to defendants.

We consider first plaintiffs argument that the trial court's application of the doctrine of laches to the instant action before the expiration of the statute of limitations period is a misapplication of the law requiring reversal. We agree. We review the trial court's conclusions of law in a bench trial de novo, but its findings of fact are reviewed for clear error. *Glen Lake-Crystal River Watershed Riparians v Glen Lake Assoc*, 264 Mich App 523, 531; 695 NW2d 508 (2004). "A finding is clearly erroneous where, although there is evidence to support the finding, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made." *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 652; 662 NW2d 424 (2003).

While our Supreme Court has expressly recognized that laches can operate to cut short a statutory limitations period when equitable relief is sought, *Rowry v Univ of Michigan*, 441 Mich 1, 11; 490 NW2d 305 (1992), we are of the opinion that a court must exercise a great deal of caution in doing so where there is a specific period of limitations adopted by the Legislature. Indeed, the Supreme Court in *Lothian v Detroit*, 414 Mich 160, 168-170; 324 NW2d 9 (1982), discussed at length the interrelationship between a statutory period of limitation and the equitable doctrine of laches. The court noted that where the legal and equitable remedies are similar, so will be the period of limitations and the point where laches will be applied. *Id.* at 169. Because the Legislature has established a period of fifteen years to bring an action regarding title to land, MCL 600.5801, a case must display "compelling equities," *Lothian, supra* at 170, to shorten that period by applying the doctrine of laches.

There is some basis in the record to conclude that plaintiffs were aware early on about their interest in the property following Bud's death. But there is also evidence in the record to suggest that one of Bud's heirs disputed that claim at the time. In short, neither side comes to equity with clean hands and a pure heart. While plaintiffs had reason to act in a more timely manner, defendants' predecessor in title also contributed to inducing plaintiffs to sit on their rights. In short, we see no compelling equities in this case to justify shortening the period of limitation by relying on the doctrine of laches instead. Accordingly, we conclude that the trial court erred in applying the doctrine of laches to the case at bar.

This conclusion then necessitates that we address the primary issue present in this case: where does title lie. The basis for defendants' claim to title is that when Ruth deeded her interest to her brother Jim, her one-third interest in the estate was dissolved and the effect of that deed was that the two brothers, Jim and Bud, were now the sole joint tenants and that full title would vest in the survivor of the two. Plaintiffs' claim is based on the idea that Ruth's interest was not dissolved by the deed, but rather that Jim took her interest, giving him a two-thirds interest in the property and Bud a one-third interest. But more importantly to the current dispute, it would mean that Jim had two contingent remainder interests in the property, one measured by his life

and one measured by Ruth's life. Under this view, when Jim died first, Bud was a joint tenant with a contingent remainder measured by his life and plaintiffs, having received by deed both of Jim's contingent remainder interests, then held a contingent remainder interest measured by Ruth's life (the contingent remainder interest measured by Jim's life, of course, failed upon his death). Then when Bud died before Ruth, plaintiffs now held the sole interest in the property, that being what obtained through Ruth's original joint tenancy as it was Ruth's contingent remainder that ultimately prevailed.

We agree with plaintiffs' interpretation of the passing of the title to this property. A joint tenancy with rights of survivorship is a joint life estate with dual contingent remainders. *Albro v Allen*, 434 Mich 271, 275; 454 NW2d 85 (1990). This estate is transferable, but the contingent remainder continues to be measured by the original joint tenant's life. *Id.* at 281. Thus, the whole estate eventually vests in the person(s) claiming through the surviving joint tenant. *Id.*

The only difference between the case at bar and *Albro* is that in the case at bar, the transfer was from one joint tenant to another rather than to a third party. But we see no basis for changing the result because of that difference. There is no indication from the record that Ruth intended to destroy her interest in the property and have the contingent remainders measured only by the lives of her two brothers. If her intent was for both of her brothers to share equally in the property and for the survivor of the two to take the whole, she would have taken action to destroy her contingent remainder interest. But there is no indication of any such intent. Ruth deeded the property to Jim alone, not to Jim and Bud. Further, the attorney who prepared the deed testified that Ruth explicitly told him that she did not want Bud involved in the transaction. Moreover, Jim gave Ruth property in exchange for her interest in the cottage. Thus, there is no indication that she intended for Bud's interest in the property to change in any way as a result of the transaction.¹ Therefore, to the extent that the trial court held that that was her intent and reformed the deed to so provide, the trial court erred.

In sum, after Ruth deeded her interest to Jim, Jim held two separate (but undivided) interests in the property, one with a contingent remainder interest measured by his own life and one measured by Ruth's life. And because Ruth proved to be the surviving joint tenant, plaintiffs, as successors to Ruth's contingent remainder interest, took the whole property.

¹ For that matter, it is unclear to us in light of *Albro* that Ruth could have destroyed her contingent remainder interest even if that was her intent. *Albro* does make the statement that a contingent remainder interest in a property held as a joint tenancy with rights of survivorship cannot be destroyed by the act of the other joint tenant. See, e.g., *Albro, supra* at 287. That implies a joint tenant may act to destroy his own contingent remainder. But *Albro, supra* at 276, also contains the very broad statement that "the dual contingent remainders of the 'joint tenancy with full rights of survivorship' are indestructible." This would imply that a joint tenant cannot even destroy his own contingent remainder interest. But, because we determine that there is no basis for concluding that Ruth intended to destroy her contingent remainder interest, we need not resolve the question whether she could in fact destroy it herself.

Because of our resolution of this matter, we need not determine whether the trial court erred in considering parol evidence of events occurring after the execution of the deed.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiffs may tax costs.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ William B. Murphy